

\*\*E-filed 1/30/06\*\*

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Attorneys for Plaintiff, HORTA, LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HORTA, LLC, a Delaware limited liability  
company,

Plaintiff,

v.

CITY OF SAN JOSE, a municipal  
corporation,

Defendant.

CASE NO. C02-04086 JF (RS)

[Related Case Nos. C00-20018 JF  
and C05-03778JF]

**STIPULATION AND [PROPOSED]  
ORDER CONTINUING FEBRUARY 3,  
2006 HEARING ON HORTA, LLC'S  
MOTION TO RECONSIDER, REOPEN,  
AND AMEND JUDGMENT**

Judge: Hon. Jeremy Fogel  
Complaint: August 23, 2002

**STIPULATION**

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2006;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on non-party Federal Aviation Administration ("FAA"), in the form of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend;

WHEREAS, on July 7, 2005, Horta and the City stipulated to continuing the August 5, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on July 13, 2005, the Court continued the hearing on the Motion to Compel to November 4, 2005;

WHEREAS, on September 20, 2005 and October 14, 2005, the FAA filed motions to quash Horta's subpoenas for documents and deposition testimony;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery from the FAA in the related case *Horta, LLC v. Federal Aviation Administration*, United States District Court, Northern District of California, Case No. C 05-03778 HRL (the "FAA Action");

WHEREAS, on September 30, 2005, Horta and the City stipulated to continuing the November 4, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on October 5, 2005, the Court continued the hearing on the Motion to Amend to February 3, 2006;

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta's discovery requests and to provide the requested deposition testimony;

1 WHEREAS, the Court has taken the FAA's motions to quash and Horta's motion for  
2 summary judgment under submission at the close of the December 16, 2005 combined  
3 hearing on the motions and has not yet ruled on them;

4 WHEREAS, Horta contends that it requires additional time to complete discovery  
5 pertaining to the issues raised in the Motion to Amend;

6 WHEREAS, Horta and the City of San Jose (the "City") agree that February 3, 2006  
7 hearing on the Motion to Amend should be continued for at least ninety (90) days;

8 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this  
9 action that the February 3, 2006 hearing on Horta's Motion to Amend shall be continued at  
10 least ninety (90) days.

11  
12 Dated: January 24, 2006

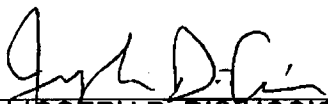
DLA PIPER RUDNICK GRAY CARY US LLP

13  
14 By:   
15 JAMES M. CHADWICK, ESQ.  
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16 Attorneys for Plaintiff HORTA, LLC

17  
18 Dated: January 26, 2006

RICHARD DOYLE, City Attorney

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20 By:   
21 JOSEPH P. DICUCCIO  
Sr. Deputy City Attorney

22 Attorneys for Defendant CITY OF SAN JOSE

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ORDER

PURSUANT TO THE STIPULATION, IT IS SO ORDERED. The hearing on Horta's Motion to Reconsider, Reopen, and Amend Judgment is further continued from February 3, 2006 to May 5, 2006, at 9:00 a.m., in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose, California.

Dated: 1/30/06

  
HON. JEREMY FOGEL  
United States District Court Judge